IN RE ANTHONY CHANG KIM FOOK, DECEASED

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
SULONG MATJERAIE J
[CRIMINAL REVISION NO: K43-05-2006]
10 JANUARY 2007

CRIMINAL PROCEDURE: *Coroner's inquiry - Verdict - Powers of magistrate - Whether penal offence could be specified in verdict - Whether improper of magistrate to have adverted to commission of any offence - Criminal Procedure Code, ss. 328, 335, 337, 339, 341A*

WORDS & PHRASES: *"Cause of death" - Meaning of - Section 328 Criminal Procedure Code*

The sole issue that confronted the High Court in this application for revision is whether a Coroner, having conducted an Inquest into the death of a deceased under the provisions of the Criminal Procedure Code ('CPC'), could specify in his verdict the commission of any penal offence by any person. The Coroner in this case had conducted an Inquest into the death of one Anthony Chang Kim Fook, and consequently gave a verdict that: (i) Deponent 28 therein, one Datuk Conrad Mojuntin ('Datuk Conrad'), had committed an offence of culpable homicide not amounting to murder; and (ii) Datuk Conrad had also contravened the provisions of the Arms Act 1960 by using the shotgun in the manner he did on the day in question. The Public Prosecutor was concerned that the Coroner, in coming to the verdict, had exceeded the powers granted him under s. 337 of the CPC, and more, might have usurped the powers and prerogatives of the Public Prosecutor under art. 145(2) of the Federal Constitution – and in the circumstances applied to the High Court for a revision of the verdict pursuant to s. 341A of the CPC. In consequence, an argument was *inter alia* advanced before the learned judge that, to satisfy the meaning of "cause of death" in s. 328 CPC, it was sufficient for the Coroner to hold – without more – that Datuk Conrad Mojuntin was the one who shot the deceased on the day in question.

Held (revising verdict):

(1) The function of a magistrate in holding an inquiry under s. 337 CPC is only to inquire when, where, how and after what manner the deceased came to his death and also whether any person is criminally concerned in the cause of death and without more. (para 11)

(2) The power conferred under s. 335 of the CPC to the Coroner holding an inquiry under Chapter XXXII of the CPC does not include any power to determine any penal offence. Whilst it is true that the provisions of s. 337 CPC require the Coroner to inquire whether any person is criminally concerned in the cause of such death, the meaning of "cause of death" as defined in s. 328 is such that it does not empower the Coroner to specify any penal offence in the verdict. To satisfy the meaning of 'cause of death' under s. 328 CPC, it would be sufficient for the Coroner to hold that "Datuk Conrad was the one who shot the deceased". (paras 14 & 15)

(3) The term "any inquiry" appearing in s. 339(2) CPC indicates that it only applies to the proceedings in a Preliminary Inquiry as the magistrate is empowered therein to make a finding of culpable homicide or murder in such repealed proceedings. It does not confer any power to a Coroner who conducts an Inquest under Chapter XXXII CPC to make a finding of murder or culpable homicide not amounting to murder. (para 17)

(4) The Coroner in the instant case erred when he specifically spelt out the penal offence committed by Datuk Conrad. Similarly, the finding that Datuk Conrad had contravened the provisions of the Arms Act 1960 was unwarranted. By doing so the Coroner had clearly usurped the powers and prerogatives of the Public Prosecutor under art. 145(2) of the Federal Constitution. On the facts, it would have been adequate for the Coroner to say that the shotgun was used to fire the shot without specifying the offending provision of the Arms Act. (paras 19 & 20)

[Impugned findings expunged from verdict.]

Case(s) referred to:

PP v. Shanmugam [2002] 6 MLJ 562 ***(refd)***

R v. Huntbash; ex parte Lockley [1944] KB 606 ***(refd)***

R v. South London Coroner; ex parte Thompson [1982] 126 SJ 625 DC ***(refd)***

Sara Lily & Satu Lagi lwn. PP [2004] 7 CLJ 335 HC ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 328, 335, 339(2), 337, 341A

Federal Constitution, art. 145(2), (3)

Reported by WA Sharif

JUDGMENT

Sulong Matjeraie J:

Brief Background

[1] This is an application for revision filed by the Public Prosecutor under s. 341A read with the provisions of Chapter XXXI of the Criminal Procedure Code ('CPC') for the High Court to examine the record of the inquiry into the death of Anthony Chong Kim Fook ('the deceased') for the purpose of satisfying the High Court as to the correctness, legality or propriety of the finding of learned Coroner recorded in his verdict dated 1 September 2006 ("verdict").

[2] At the commencement of this hearing, learned senior federal counsel Tuan Suhaimi bin Ibrahim told this court that he has no objection to learned counsel holding watching brief for the family of the deceased as well as learned counsel for Datuk Conrad Mojuntin, deponent No. 28, to submit in the hearing of the revision of the inquiry into the death of the deceased. With respect, I subscribe to the view that both of them, in their capacities as counsel to their respective clients, have "real, substantial and reasonable right" to address this court, see *Sara Lily & Satu Lagi lwn. Public Prosecutor* [2004] 7 CLJ 335.

[3] The Coroner was directed by the Public Prosecutor on 15 June 2006, under s. 339 of the CPC, to hold an inquiry into the cause of, and the circumstances connected with, the death of the deceased. Learned Coroner held an inquiry from 31 July 2006 and his terms of reference were to find out:

(1) When did the deceased die?

(2) Where did the deceased die?

(3) How did the deceased die?

(4) In what manner the deceased died?

(5) Whether any person is criminally concerned with the death?

[4] On 1 September 2006 learned Coroner recorded his findings in his written verdict of even date. The Public Prosecutor is rather concerned with regards to the said verdict in respect of his findings on the question of whether any person is criminally

concerned in the cause of death of the deceased. In essence the Public Prosecutor suggested that learned Coroner had factually identified Deponent 28 Datuk Conrad Mojuntin "had committed an offence of culpable homicide" (emphasis added).

[5] The Public Prosecutor argued that learned Coroner has exceeded his powers under s. 337 CPC when he named or specified the penal offence in his verdict; thus usurping the powers and prerogative of the Public Prosecutor under art. 145(2) of the Federal Constitution.

Section 337 of CPC states:

> A Magistrate holding an inquiry shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death.

[6] Article 145(2) of the Federal Constitution states:

> It shall be the duty of the Attorney General to advise the Yang di-Pertuan Agong or the Cabinet or any Minister of such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Yang di-Pertuan Agong or the Cabinet, and to the functions conferred on him by or under this Constitution or any other written law.

[7] Section 337 of the CPC serves as the terms of reference within which the Coroner conducts the inquest into the death of the deceased. As such the Coroner cannot act outside the perimeter of the said terms of reference.

[8] It must be borne in mind that in an inquest, there are no parties, there is no indictment, there is no prosecution, there is no defence and there is no trial. It is simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use, see *R v. South London Coroner; ex parte Thompson* [1982] 126 SJ 625 DC.

[9] In another English case of *R v. Huntbash; ex parte Lockley* [1944] KB 606, Viscount Caldecote CJ adds:

> ... It is not probability; however which determines verdicts, but proved facts, and, if facts which justify a specific verdict are not proved at an inquest, there is no alternative but to return an open verdict ...

[10] This is because a Coroner is bound by evidence and can only find facts which are proved in evidence and are not as a result of guesswork which is "certainly out", per Suriyadi J (now JCA) in *Public Prosecutor v. Shanmugam* [2002] 6 MLJ 562.

[11] The function of a Magistrate in holding an inquiry under s. 337 is only to inquire when, where, how and after what manner the deceased came to his death and also whether any person is criminally concerned in the cause of death and without more. Learned Coroner would usurp the powers and prerogatives of the Public Prosecutor enshrined under art. 145(2) of the Federal Constitution if he were to indulge into the question of whether a particular offence was committed with which a person may be charged. That, I suggest, is the unfettered function of the Attorney General who is the guardian of public interest and who under art. 145(3) of the Federal Constitution shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah Court, a native court or a Court Martial.

[12] It is observed that in his written verdict learned Coroner had specified the commission of penal offences in two areas as follows:

(1) At p. 17, lines 13 to 15 where it is stated: "In the light of the evidence in this Inquest, Deponent 28 Datuk Conrad Mojuntin had committed an offence of culpable homicide.";

(2) At p. 17 lines 31 to 34 to p. 18 lines 1 and 2 where it states:

> "In so far as the rifle and the shotgun mentioned above, he was permitted to possess the said firearms "for crop protection and sporting". Nowhere was it mentioned that they were for "self Protection." By using the said shotgun in the manner that he did on 23/10/2005, Deponent 28 was also contravening the provisions of the Arms Act 1960."

[13] Mr. Ram Singh, learned counsel representing the family of the deceased, argued that there was nothing wrong for the Coroner in making such findings as these were based on adduced evidence. Mr. Zahir Shah for Deponent 28, Datuk Conrad Mojunting, on the other hand adopts the approach of learned senior federal counsel at para 2.7 of encl. 7. In essence it states that it is sufficient for the Coroner to hold that Datuk Conrad Mojuntin was the one who shot the deceased to satisfy the meaning of the "cause of death" under s. 328 of the CPC. He further submits about unlawful act and that his client was acting in self defence. Apart from recording what was submitted, I feel that it is not necessary for me to respond to those observations. Finally, it was his submission that this court should substitute the verdict of learned Coroner to that of 'misadventure'.

[14] The powers conferred under s. 335 of the CPC to the Coroner holding an inquiry under Chapter XXXII of the CPC does not include any power to determine any penal offence. Whilst it is true that the provision of s. 337 of the CPC, requires the Coroner to inquire, *inter alia*, whether any person is criminally concerned in the cause of such death, the meaning of "cause of death" as defined under s. 328 of the CPC is somewhat different as follows:

> In this Chapter the words "cause of death" include not only the apparent cause of death as ascertainable by inspection or post mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and so as to whether his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person.

[15] This provision of the CPC does not empower the Coroner to specify any penal offence in the verdict. It would have been sufficient for the Coroner to hold that "Datuk Conrad Majuntin was the one who shot the deceased to satisfy the meaning of "cause of death" under s. 328 of the CPC".

[16] Further the proviso of s. 339(2) of the CPC only applies to the proceeding in Preliminary Inquiry under Chapter XVII of CPC which has since been repealed by the Criminal Procedure Code (Amendment) Act 1995 (Act A908/95). The proviso to s. 339(2) of the CPC provides:

Provided that this subsection shall not apply to any inquiry at which a finding of murder of culpable homicide not amounting to murder has been returned against any person.

[17] The word "any inquiry" appearing in s. 339(2) of the CPC indicates that it only applies to the proceedings in a Preliminary Inquiry as the Magistrate is empowered to make a finding of culpable homicide or murder in the said repealed proceedings. It does not however confer powers to the Coroner who conducts the proceedings in Inquiries of Death under Chapter XXXII of the CPC to make a finding of murder or culpable homicide not amounting to murder.

[18] It is my view that learned Coroner in this instant case erred when he specifically spelt out the penal offence committed by Deponent 28 Datuk Conrad Majuntin as set out in the verdict. It would have been fitting had he confined himself purely to the five points contemplated in s. 337 of the CPC.

[19] Similarly on the finding of learned Coroner that Datuk Conrad Majuntin had contravened the provisions of the Arms Act 1960, I am of the view that s. 337 of the CPC does not require that an offence in relation to the firearm in the hearing of the inquest to be ascertained by learned Coroner. By doing so, he had usurped the powers and prerogatives of the Public Prosecutor under art. 145(2) of the Federal Constitution.

[20] It would have been adequate just to say that a shotgun was used to fire the shot without specifying the offending provision of the Arms Act.

[21] It is the view of this court that the Coroner in an inquiry under s. 337 of the CPC has no power to direct the prosecution of any person for any particular offence. Indeed he has no power to propose or recommend or direct any party to be charged for any offence be it culpable homicide or an offence under the Arms Act. This is the function of the Attorney General as provided for under the Federal Constitution.

[22] I have given my deepest consideration to the submissions of the learned senior federal counsel and the two learned counsel representing the two parties mentioned above and to the address made by them in this court yesterday afternoon. Based on the finding of the Coroner I cannot agree with the proposal to change it to a verdict of misadventure.

[23] Further in my view it is sufficient for learned Coroner to hold that Datuk Conrad Mojuntin was the one who shot the deceased to satisfy the meaning of s. 328 of the CPC and that a shotgun was used to fire the shots. Consequently it is my finding that the findings of learned Coroner that:

(i) Datuk Conrad Mojuntin had committed an offence of culpable homicide; and

(ii) He had contravened the provision of the Arms Act 1960

in the verdict of an inquiry of death conducted under Chapter XXXII of the CPC should be expunged from the verdict dated 1 September 2006.

[24] Apart from that flaw of specifying the commission of the penal offences of culpable homicide and the contravention of the provision of the Arms Act 1960, this court has no reason to question the correctness, legality or propriety of the finding of learned Coroner encapsulated in the verdict dated 1 September 2006.

[25] As a consequence the finding of learned Coroner in his verdict is hereby revised accordingly.